

ENVIRONMENTAL PERFORMANCE PARTNERSHIP AGREEMENT

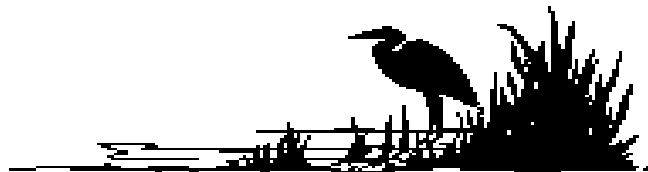
between

**THE LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

and

**THE ENVIRONMENTAL PROTECTION
AGENCY - REGION 6**

February 18, 1998



**Environmental Performance Partnership Agreement
between
The Louisiana Department of Environmental Quality
and
Region 6 of the U.S. Environmental Protection Agency**

The Louisiana Environmental Performance Partnership Agreement (PPA) represents a new approach evolving between the Federal/State relationship in our joint effort to protect and enhance our natural environment. This approach was memorialized in an Agreement between the Administrator and the Deputy Administrator of the U. S. Environmental Protection Agency (EPA) and the President and the Vice President of the Environmental Council of the States (ECOS). That document outlined a process for differential oversight entitled the National Environmental Performance Partnership Agreement (NEPPA).

This Agreement between the Louisiana Department of Environmental Quality (LDEQ) and Region 6 of the EPA, while drawing heavily on the NEPPS concept, addresses what the signatories to the Agreement believe is a more fundamental and comprehensive issue than that of oversight reform. This Agreement is an explicit attempt by its parties to find new measures and redefine the relationship between LDEQ and EPA to foster a broader sense of partnership and fully complement each agencies' use of resources to solve environmental problems. Particular attention will be paid to compliance and enforcement activities over the next two

years because management at LDEQ and EPA see this as an area where improved communication and accomplishment measurement can produce effects on environmental results. At the same time, both parties seek to apply the lessons learned from past experience to establish the groundwork for enhanced cooperation in other areas.

To this end, through the implementation of this Agreement, LDEQ and EPA have set up mechanisms to improve our ability to jointly target priority environmental problems, and identify activities that can be streamlined.

In FY 1998, Louisiana's National Environmental Partnership Agreement will serve as an overarching agreement and will also include LDEQ environmental assistance programs. Categorical funding from the following authorizations have been combined into a consolidated grant. These are:

- Water Pollution Control (106)

- Surface Water

- Ground Water

The following categorical grants are eligible to be combined into a Performance Partnership Grant (PPG) in upcoming grant years. For the present, these categorical grant programs, may have funds awarded using separate grant applications, which are linked to specific goals, objectives and individual outputs:

- Nonpoint Source Management (319h)

- Clean Air Act, as amended in 1990

- Water Quality Cooperative Agreements (CWA Section 104(b) (3))

- Hazardous Waste Management (Solid Waste Disposal Act Section 3011(a))

- Underground Storage Tank (Solid Waste Disposal Act Section 2007(f) (2))

- Lead-Based Paint Activities (TSCA Section 404(g))

- Toxics Compliance and Monitoring (TSCA Section 28)

- Pollution Prevention Incentives for States (PPA Section 6605)

- Wetlands Program Development (CWA Section 104(b)(3))

The focus of efforts in the first two years of the PPA will be to streamline communication both within LDEQ and between LDEQ and EPA. Certain restructuring of the LDEQ will help streamline department activities. This will enable the LDEQ to fulfill commitments and obligations more efficiently. At the end of the first year, EPA and LDEQ will jointly review and revise the Agreement based upon experience gained during implementation. Thereafter, the review will be done biannually. This review will be conducted by a joint LDEQ/EPA team in July and August.

The LDEQ team will consist of the Executive staff, and other staff designated by the LDEQ Secretary. The EPA team will consist of the EPA Louisiana State Project Officers, and other members designated by the EPA Region 6 Louisiana Mentor/Director.

This Agreement contains eight sections as follows:

- I. Statement of General Principles**
- II. Environmental Results**
 - A. Proposed Environmental Goals and Indicators**
 - B. Highlights of Environmental Achievements**
- III. Program Performance and Accountability**
- IV. Enforcement and Compliance Assurance**
- V. Public Involvement**
- VI. Dispute Resolution Process**
- VII. Schedule**
- VIII. Statement of Commitment**

I. Statement of General Principles

This Agreement represents continued evolution in the roles of both the Federal and State partners. The maturity of LDEQ programs, the growing respect by LDEQ of EPA's desire for appropriate change, and our growing history of partnership activities have set the stage for this Agreement. EPA and LDEQ realize that we can accomplish better environmental protection together. We recognize that we need each other, as well as the regulated community and the public at large, to successfully protect the natural resources in Louisiana.

The principles of this Agreement include:

- a commitment to maintain existing and future EPA delegations and authorizations to LDEQ;
- a commitment to continue existing environmental indicators and core measures until such time that replacement measures have been developed by LDEQ and EPA.
- neither party waives any administrative claims, positions or interpretations it may have with respect to the applicability or enforceability of Federal or State regulations.
- a commitment to institutionalize environmental problem solving as an operational methodology based on an environmental strategy that encourages innovation, prevention of pollution, incentive-based regulatory alternatives, and more coherent cross-media efforts to produce collaborative solutions to environmental problems;
- a commitment to actively search for meaningful environmental measures of progress that demonstrate environmental results;
- promotion of continuous improvement in approaches to protecting the environment;
- a commitment to engage stakeholders in the work associated with this agreement;
- continuous commitment to enforce existing environmental regulations;

- the open sharing of information and perspectives; electronic data reporting, considering internet applications, Electronic Data Interchange (EDI), or other methods, will be provided where possible for data interchange between LDEQ, regulated facilities and EPA.
- attendance to special needs of disadvantaged peoples and communities; and
- a recognition that the responsible stewardship of financial, material and human resources of both agencies is inherent to this program.

II. Environmental Results

Under the PPA, State and Federal program managers are directed to focus more on "improving environmental results." To achieve this new focus, the PPA calls for setting environmental goals and using environmental indicators to keep better track of our progress. We see this new focus as part of the next generation of environmental protection that is starting to emerge and take shape in various ways.

Both the LDEQ and Region 6 have some experience working with characterization of environmental conditions. LDEQ has historically collected ambient environmental quality data and reported findings in various ways. Under the PPA, however, we think that more attention must be paid to developing improved linkages between actual environmental conditions and program performance so that we can better assess our effectiveness over time. It should also help us to apply our resources where they will do the most good.

We see this new focus as a developmental and on-going process. This first effort is not a final product by any means, and we expect there will be refinements as we go along. Because we are embarking on this new path, we want to ensure that the principal stakeholders have ample opportunity to review what we are doing and to offer suggestions about how this should be done. For this reason, an agenda of proposed environmental goals and indicators is presented that is intended to be suitable and useful for these environmental programs.

A. Proposed Environmental Goals and Indicators

Appendix A shows the environmental goals and indicators that LDEQ is proposing to pursue. EPA and LDEQ see these goals as a useful way to focus more attention on environmental results and to guide program planning. EPA and LDEQ do not view these goals as specific deliverables that involve accountability for grants purposes. In other words, program success does not hinge solely on attainment of particular goals.

Establishment of these environmental goals gives programs a more clear sense of direction and certainly sound performance should show some progress towards the desired outcome. It must be understood, however, that some environmental conditions are influenced by factors beyond the normal control of an environmental program. Thus, actual attainment of a goal

may be compromised even though program performance went very well by most measures. Even with limitations, we believe it will still be useful to go through the goal setting process and to work on program linkages.

B. Highlights of Environmental Achievements

LDEQ and EPA will identify highlights of environmental achievements annually.

III. Program Performance and Accountability

LDEQ and Region 6 recognize that various approaches have been developed over the years regarding program accountability and, in particular, planned output commitments and performance measures. Program-specific differences have resulted that often make it difficult to do comparisons across programs and to achieve equitable evaluation between media programs. While some differences may still be necessary and useful, EPA and LDEQ see benefits to the establishment of a reasonably uniform performance accountability system. EPA and LDEQ also see the need to clearly articulate certain cross-cutting performance expectations that will be applicable across all programs.

Toward this end, LDEQ and, when applicable, Region 6 agree to the following multi-program performance deliverables for FY98:

- a. National environmental program information systems will be supported through timely submittal of data that is collected by the State and the Region.
- b. Suitable fiscal controls will be operational and adequate financial reporting will be maintained.
- c. When reporting is not available electronically to EPA, reports will be provided as mandated by statute, regulations and other negotiated documents.
- d. Performance strategies will be implemented and results achieved will be described in the next self-assessment.

Furthermore, LDEQ and Region 6 recognize that FY98 is a transition year when LDEQ will be working under the new PPA for the first time. As such, we will be trying out the new approaches and learning from our experience. To accommodate what is learned, EPA and LDEQ may need to revise our performance expectations at appropriate times during the year. Both parties are amenable to being responsive to responsible requests for change as the circumstances may dictate.

IV. Enforcement and Compliance Assurance

The Enforcement Memorandum of Understanding (MOU) negotiated between the LDEQ and EPA is to establish a coordinated enforcement program that effectively contributes to improvements in the environment.

The MOU is included as Appendix B to the PPA.

In the areas of compliance assistance and enforcement, EPA commits to establishing with the LDEQ a dynamic agreement which will fully articulate the complementary activities to be carried out in Louisiana each fiscal year. Priorities, projects and commitments will change from year to year based on successes of the past as well as the unique concerns, interests and strengths of each agency.

V. Public Involvement

Both the LDEQ and the EPA are publicly accountable government organizations that exist to protect human health and the environment. This Agreement is an evolving public document that can inform and guide public debate on environmental problems, goals, priorities, strategies and accomplishments; a document whose development and content over time will be in part shaped by public involvement. The Agencies commit to development and use of a mix of approaches to effectively achieve public outreach and involvement.

In the spirit of continuous improvement, LDEQ and EPA envision the establishment of processes to engage stakeholders in comment and discussion that will shape future State-EPA environmental performance agreements, including self-assessments, planning and goals-setting, and the creation and evaluation of measures of success (e.g., performance measures and progress toward environmental protection goals).

VI. Dispute Resolution Process

LDEQ and EPA Region 6 will use an agreed upon dispute resolution process to handle the conflicts that may arise as both agencies implement environmental programs and will treat the resolution process as an opportunity to improve our joint efforts and not as an indication of failure.

There are formalized programmatic conflict resolution procedures that need to be invoked if the informal route has failed to resolve all issues. 40 CFR 31.70 outlines the formal grant dispute procedures.

These are all time consuming and should be reserved for the most contentious issues. For less contentious matters that cannot be resolved by the EPA Branch Manager and the LDEQ Program Administrator, we will use the following procedures when there is no resolution and two weeks have passed. There should be comparable escalation in each organization, (to the EPA Division Director and the LDEQ Assistant Secretary) accompanied by a statement of the issue and a one page issue paper. A conference call between the parties should be held as soon as possible. Disputes that persist will be raised to the EPA Regional Administrator and the LDEQ Secretary.

VI. Schedule

Effective date of Agreement

February 18, 1998

Review for FY 99

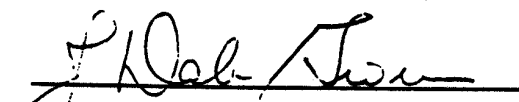
July - August 1998

Review for FY 00

July - August 1999

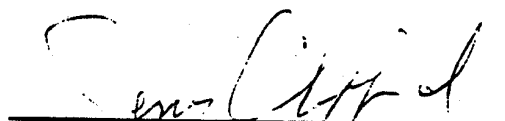
VIII. Statement of Commitment

This Agreement is hereby entered into this 18th day of February, 1998. It becomes effective upon signature by each of the parties, and remains in effect until revised. Either party may withdraw from this Agreement or amend this Agreement upon 60 days written notice to the other party.


J. Dale Givens
Secretary

Louisiana Department of Environmental Quality

February 18, 1998


Jerry Clifford
Acting Regional Administrator

U.S. Environmental Protection Agency
Region 6

February 18, 1998

APPENDIX A

PROPOSED

ENVIRONMENTAL GOALS AND INDICATORS FOR LDEQ

ENVIRONMENTAL INTEREST	ENVIRONMENTAL GOAL	ENVIRONMENTAL INDICATOR
Environmental Emergencies	The number of emergency release incidents that have adverse off-site consequences in the year 2000 decreased by 20% as compared to 1995.	Annual number of emergency incidents that have adverse off-site consequences.
Toxic Chemical Releases	The total amount of toxic chemicals released in the year 2000 will be reduced 15% as compared with 1995.	Total amounts (pounds) of toxic chemicals released per year by industrial facilities that must file a report under S.313 of EPCRA.
Pollution Prevention	Pollution prevention (P2) is accepted as the preferred strategy and is being practiced in some manner by the majority of the regulated community.	Number of P2 projects implemented by TRI-RCRA filers each year and amounts of pollutants and wastes reduced at the source.
Environmental Awareness Experiences	Environmental education is taking place pursuant to a designed strategy of involving children, students and adults and reaching more persons by 2000.	Annual number of persons who participate in environmental education.
Aquifer Evaluation and Protection	The percentage of people in the state served by the public ground water supply systems participating in the wellhead protection system will increase by 7.5% by 2000.	Percentage of people in the state served by public ground water supply systems participating in the wellhead protection program.
Waterway Conditions	By 2010, pollutant control mechanisms will be developed to address water bodies on the 1998 303(d) list.	Cumulative percent per year of listed water bodies for which cumulative pollutant control mechanisms have been developed.
Hazardous Waste Management Facilities	By 2005, 95% of high priority facilities will have human exposures controlled and 70% of high priority facilities will have ground water releases controlled. A baseline will be developed by EPA in calendar year 1998.	RCRIS codes - Human exposures controlled determination (CA 725) and ground water releases controlled determination (CA 750).
Hazardous Waste Management Facilities	By 2005, 90% of existing hazardous waste management facilities (based on the universe baseline from 1996) will have approved controls in place to prevent dangerous releases to air, soil, and ground water.	Final permit determination, post-closure permits issued, activities at inactive facilities referred to RCRA for corrective action (RCRIS codes to be developed by EPA in calendar year 1998).
Land	By 2005, 95% of all Underground Storage Tanks (USTs) in Louisiana will be registered.	Number of USTs registered (including newly identified sites).
Land	By 2001, the number of USTs not upgraded will fall to 5% or below.	Number of USTs with upgrades per registration and documentation.
Statewide Air Quality	Meet the NAAQS for all criteria pollutants by 2005.	Ambient monitoring data trends of criteria pollutants.
Air Quality in Non-Attainment Areas	No violations of the ozone NAAQS by 2005.	Number of ozone exceedances shown as three year averages.
Hazardous Air Pollutants	Decreasing trend in total emissions of hazardous air pollutants through 2005.	Trends of hazardous air pollutant emissions.

Appendix B

MULTI-MEDIA / MULTI-YEAR ENFORCEMENT MEMORANDUM OF UNDERSTANDING

BETWEEN THE

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

AND

U.S. ENVIRONMENTAL PROTECTION AGENCY

**MULTI-MEDIA / MULTI-YEAR
ENFORCEMENT MEMORANDUM OF UNDERSTANDING
BETWEEN THE
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
AND
U.S. ENVIRONMENTAL PROTECTION AGENCY**

I. Introduction

The Louisiana Department of Environmental Quality (LDEQ) and the U.S. Environmental Protection Agency (EPA) agree that enforcement is one of the key components of any environmental protection program. Because the UST program is limited, the only portion of this MOU that applies to UST is II.B.2. The state is federally approved to implement the following programs:

Clean Air Act (CAA);
Resource Conservation Recovery Act (RCRA), Subtitle C (Hazardous Waste) and
Subtitle I (Underground Storage Tank (UST)); and
National Pollutant Discharge Elimination System (NPDES), hereafter referred to as
Louisiana Pollutant Discharge Elimination System (LPDES).

The undersigned enter into this Memorandum of Understanding (MOU) to ensure that both state and federal resources are used effectively to achieve high rates of compliance and to work together to deter noncompliance. Relative to the LPDES Program, the state and EPA, agree to abide by the conditions contained in the NPDES Memorandum of Agreement between LDEQ and EPA, which became effective on August 27, 1996.

This MOU documents the State/EPA relationship for implementing an effective enforcement program that meets or exceeds minimum national criteria, as specified in EPA Program Policy documents and the LPDES Delegation Memorandum of Agreement (MOA). The EPA Program Policy documents encompass only those documents that are in effect at the time of the signing of this MOU by both Agencies. A list of the documents is included as Attachment A. Specifically, the MOU ensures that there are:

1. clear criteria and procedures for EPA to use in assessing state compliance and enforcement program performance;
2. clear criteria for direct federal enforcement, including procedures for advance consultation and notification;
3. adequate state/federal reporting to ensure effective coordination and effective opportunities for state input into federal actions; and

4. clear criteria for both EPA and LDEQ to take timely and appropriate enforcement action.

The above program requirements will promote a high level of compliance with state statutes and rules and federal laws and regulations. The LDEQ and EPA agree to maintain, within staffing and budgetary constraints, a qualified, trained staff to ensure that all approved programs are effectively enforced.

II. Inspections

The RCRA program has statutory inspection requirements. The LPDES program has mandated inspection requirements. The Air program provides for inspections to be developed from an inspection targeting strategy. In lieu of meeting these obligations as they are set forth by LDEQ and EPA annually, LDEQ must describe any modification from a federally mandated inspection schedule or program specific requirements. LDEQ will then describe specifically through an inspection targeting strategy for single and multi-media inspections, where resources are to be reallocated. This strategy will provide for improved environmental benefit.

Taking into account both federal and state enforcement program goals as outlined in state and EPA strategic plans, the LDEQ, in coordination with EPA, will develop an inspection targeting strategy and a proposed list of inspections that are to be completed during the fiscal year. One month prior to the beginning of EPA's fiscal year, LDEQ will submit a draft of its inspection targeting strategy and a proposed list of targeted facilities. EPA will notify LDEQ of its concurrence or issues to be resolved within 30 days of receipt of the list of targeted facilities.

In addition to scheduled inspections, complaints referred to LDEQ by EPA will be evaluated in accordance with LDEQ complaint prioritization.

EPA agrees to inform the LDEQ of inspections scheduled by EPA at least 2 weeks prior to the inspection, except for inspections involving imminent and substantial endangerment to human health or the environment. This information will be provided by a telephone call to the appropriate LDEQ Program Manager. EPA and LDEQ agree not to notify the facility of impending inspections by either agency.

A. CAA

The LDEQ targeting strategy addresses the state's priorities in scheduling major sources for yearly inspections. Sources automatically scheduled each year include:

1. new sources permitted and operational during the federal FY;
2. all NESHAP sources except asbestos demo-reno projects;
3. VOC sources (greater than 50 tons/year) located in serious and marginal ozone non-attainment areas; and
4. sources not inspected within the previous five calendar years.

Selection criteria in the computer program utilized to prioritize the remaining sources in the data base are:

1. criteria pollutant loading;
2. compliance history;
3. multi-program applicability;
4. number of reported upsets; and
5. complaint history.

B. RCRA

1. RCRA Inspection Targeting Strategy

The RCRA inspection targeting strategy will include evaluation of inspection data, e.g., universe status, history of violations and complaints, location, date of last inspection, and federally mandated inspections. The targeting strategy focuses on three areas:

- a. federally mandated inspections, such as federal facilities and commercial facilities with the potential to accept Superfund waste;
- b. boiler and industrial furnace inspections; and
- c. inspections at treatment, storage, disposal facilities and generators, all of which are determined by risk-based criteria. Criteria include history of violations and complaints, date of last inspection, location and generator status.

2. UST Inspection/Enforcement

Because the UST program is limited, the only portion of this MOU that applies to UST is II.B.2. The UST program includes the following:

- a. As required by the Federal and State regulations, by December 22, 1998, all existing USTs must be either upgraded according to the upgrade criteria or the UST's must be closed in accordance with the closure requirements. This is a critical event in the UST program since the regulated community was given 10 years to accomplish the upgrade or closure procedure (effective date of the requirement was on December 22, 1988). Since the event is so critical to the program, it is important that the states become partners in the event. Therefore, LDEQ will cooperate with EPA in various national initiatives in preparing for the December 22, 1998 deadline. Also, LDEQ will assist EPA in conducting the resulting enforcement after the 1998 deadline has passed for those facilities that are not in compliance with the upgrade or closure requirements.
- b. At the request of EPA and on a negotiated schedule, LDEQ will accompany EPA when conducting compliance inspections of USTs in Louisiana. EPA will utilize field citations for violations found, when appropriate.

- c. LDEQ will cooperate with EPA's Region 6 in the development and implementation of a regional enforcement strategy for meeting the 1998 deadlines and post 1998 requirements.
- d. LDEQ will provide information from their tank data base to assist in targeting facilities for inspection. Also, the state will provide EPA with state inspection data when necessary and appropriate.
- e. If there are any conflicts between this enforcement MOU and the State Program Approval (SPA) MOA, the SPA MOA will take precedence.

C. LPDES

The LPDES inspection targeting strategy will be consistent with the program MOA. LPDES dischargers will be inspected as often as necessary, based on available resources, so as to promote adequate protection of human health and the environment. EPA and the LDEQ agree that inspection of major facilities is a priority, but flexibility must exist with respect to inspection resources to allow for more focused inspection efforts in targeted sectors and in watersheds or in areas where the effects of discharges create potentially higher risks to surrounding communities, ecosystems and sensitive populations.

If on-line access to the LDEQ wastewater inspections' database is not available, LDEQ will provide EPA, upon request, printouts or an electronic copy of the database.

III. Roles and Responsibilities

A. Approved Programs

EPA may conduct evaluations of LDEQ's approved programs' enforcement activities to monitor the implementation of this Enforcement MOU. During these evaluations, EPA's enforcement activities will also be reviewed. The LDEQ's program will be reviewed against the following measures of compliance and enforcement performance for applicable program areas:

1. Maintain a compliance monitoring program, consistent with program guidance and the LPDES MOA.
2. Maintain a compliance monitoring quality assurance program which establishes:
 - a. minimum requirements for tracking the field investigation program;
 - b. inspection documentation;
 - c. time limits for preparing inspection results;
 - d. evaluation of self-reported data; and
 - e. time limits for data entry (inspections, compliance tests, self-reported data) to national program databases.
3. Maintain a complete, accurate, and current inventory of the regulated sources.

4. Report all violations, violators and enforcement actions to national program databases. Additionally, provide notification to EPA of those violators that cannot be identified in RCRIS (i.e., non-notifiers that have not yet been issued an EPA Identification number).
5. Take timely and appropriate enforcement actions (as specified in the Federal delegated Programs EPA Enforcement Policies and Guidance documents and the LPDES MOA), including appropriate remedies and effective use of administrative penalties as allowed by State statutes, with timely escalation or referral to EPA or the Louisiana Attorney General's Office, when needed, and resolution of violations.
6. Consider innovative approaches to enforcement including:
 - a. pollution prevention;
 - b. environmental auditing;
 - c. innovative remedies in enforcement settlements;
 - d. contractor listing/suspension and debarment;
 - e. targeting;
 - f. creative use of legal tools;
 - g. alternative dispute resolution; and
 - h. alternative or supplemental environmental projects.
7. Ensure facilities are meeting scheduled compliance dates as required in enforcement actions; if not, escalate enforcement.
8. Inform EPA about facilities' return to compliance status and/or extension of compliance schedules.
9. Attempt to resolve any known differences of LDEQ inspection findings versus EPA inspection findings for a specific plant or facility during EPA lead and/or oversight inspections. EPA and LDEQ will attempt to resolve within 30 days any differences prior to initiating any enforcement action.

B. Review Enforcement Activities

The senior managers of the EPA and LDEQ will meet to mutually review enforcement activities. The data needed to evaluate these enforcement programs will be drawn from the reporting data supplied by LDEQ and EPA.

IV. State Enforcement Performance

The EPA will review the status of enforcement commitments and active enforcement cases, with the LDEQ, as needed. LDEQ will provide the opportunity for a semi-annual meeting with EPA to discuss progress on cases, if needed. The meeting will be arranged by mutual agreement.

As needed, there will be a meeting of EPA and LDEQ managers to discuss both agencies' abilities to meet the criteria established in this Enforcement MOU. The meeting will be arranged by mutual agreement. At that time, a decision will be made concerning timely and appropriate enforcement and which agency can best meet the required time frames of outstanding cases.

EPA may conduct performance evaluations of LDEQ's approved enforcement programs using both quantitative and qualitative information. For a statistical analysis of LDEQ accomplishments, EPA will utilize information entered into the national databases and other reporting data provided by LDEQ in response to a formal request by EPA. EPA will have access to LDEQ databases for additional information.

LDEQ and EPA agree to meet quarterly to review the noncompliance status of the LPDES permittees and establish/revise enforcement priorities, discuss enforcement strategy, exchange compliance inspection information and other pertinent data, and coordinate specific enforcement actions. Coordination on appropriate LDEQ and/or EPA enforcement actions for specific noncompliant permittees will continue as an ongoing activity.

V. Direct Federal Enforcement

EPA will not undertake enforcement actions in the State of Louisiana under any program covered by this MOU without prior consultation with LDEQ. At this time, EPA and LDEQ will decide which Agency should pursue enforcement. EPA will provide LDEQ written monthly status reports on any enforcement action initiated by EPA (except criminal). These updates will include a copy of the complaint, the final administrative order, and other appropriate enforcement documents. EPA will notify LDEQ of the issuance of any enforcement action by a phone call to the appropriate enforcement manager on the day of issuance. Also, it will be confirmed in a letter accompanied by a copy of the enforcement action.

When EPA and LDEQ agree that EPA should be the enforcement lead, the LDEQ will not issue enforcement for the violation(s) being pursued by EPA (unless joint action has been arranged) so that there is no duplication of effort or confusion. When EPA and LDEQ agree that LDEQ should be the enforcement lead, the EPA will not issue enforcement for the violation(s) being pursued by LDEQ (unless joint action has been arranged) so that there is no duplication of effort or confusion. The LDEQ will not communicate with the facility regarding those violations for which EPA has the enforcement lead without coordinating with EPA. If, however, the EPA action is the result of a LDEQ referral for civil or administrative action, LDEQ will send a copy of the referral letter to each facility referred. This does not include criminal referrals to EPA's Office of Criminal Investigations Division.

EPA will be the enforcement lead for all violations of the RCRA import or export regulations that are determined to be of national significance.

EPA will coordinate press releases with LDEQ. Copies will be provided to LDEQ prior to any formal release. EPA will acknowledge the contribution of LDEQ in any news release to ensure that the state is credited with enforcement of the state programs and with supporting the enforcement of the federal programs.

A. National Enforcement Screening Strategy

EPA has the primary responsibility for carrying out the National Enforcement Screening Strategy (NESS). NESS is a program through which EPA screens the compliance records of national corporations at its many facilities located throughout the country. National corporations that demonstrate a history of noncompliance for facilities across the nation will be reviewed for a consolidated national enforcement action. LDEQ may participate in each step of the screening, reviewing and carrying out of any NESS action within the state. If the LDEQ has pending enforcement actions against a corporation that EPA plans to include in a national enforcement effort, LDEQ and EPA will meet to decide which agency should have the lead for the enforcement action balancing the need for an expeditious return to compliance with effective deterrence.

B. Situations and Procedures Which May Allow Direct Federal Enforcement for Approved Programs.

LDEQ has primary enforcement responsibility for all approved activities under the CAA, RCRA, NPDES, and UST programs. EPA has the primary enforcement authority for any unauthorized or non-delegated portions of RCRA, NPDES, or the CAA. However, there may be circumstances where LDEQ is unable to take "timely and appropriate" actions, where LDEQ finds it advantageous for EPA to join them or intervene, or where EPA may need to act to satisfy the minimum national enforcement criteria.

For all cases referred to the State Attorney General's Office that are not filed in a timely manner, LDEQ and EPA agree that EPA may initiate a parallel federal action after meeting with appropriate state personnel from the LDEQ and the Louisiana Attorney General's Office.

EPA may take direct enforcement action in the following cases:

1. As specified in LPDES MOA.
2. Situations where LDEQ formally refers a case and provides justification based on unique case-specific circumstances. EPA will not take action on a case referred by the LDEQ until all case development data are provided and EPA has notified LDEQ that it has accepted the case. Upon receipt of all case development data, EPA will make a determination of acceptance and notify LDEQ by letter within 20 working days. EPA will pursue enforcement, as appropriate. Likewise, the LDEQ will not take action on a case referred by EPA unless all case development data are provided and the LDEQ has notified EPA that it has accepted the case. At that time, LDEQ will pursue enforcement, unless there are unusual circumstances involved.
3. Situations where LDEQ fails to meet the timely and/or appropriate enforcement criteria and EPA has determined that their action will meet timely and appropriate criteria. Where alternative schedules have been agreed to by the LDEQ and EPA, these schedules will define timely action on a case specific basis. EPA may consider penalty-only actions

if LDEQ fails to impose an appropriate sanction. EPA recognizes the concept of prosecutorial discretion and will consider case-specific facts in implementing any penalty-only action.

4. Cases of national significance (e.g., interstate or multi-state issues, or supportive of national initiatives).
5. Violations of EPA Orders or Consent Decrees.
6. Situations where EPA has conducted inspections in the state.
7. Repeat violators (i.e., violators subject to three or more State enforcement actions).
8. Situations involving an imminent hazard where EPA can take action more quickly than LDEQ or LDEQ requests EPA assistance.

In those cases where EPA does take an enforcement action, the following protocol (except for imminent hazard) will be followed:

1. EPA, or a designated representative, will be provided access to the LDEQ files to obtain data for all case development at the time a case is referred to EPA. Access will also be provided when EPA initiates enforcement action or when EPA pursues federal enforcement in those cases where the state is not authorized, as appropriate under Louisiana State law.
2. EPA agrees to make arrangements for coordinated action.
3. EPA agrees to define to the LDEQ the extent of EPA's enforcement actions. In certain cases referred by the LDEQ to EPA and based on state inspections, EPA may also choose to inspect the facility and/or may choose to send an inquiry letter to the facility to gather information that is not obtainable in a file review at LDEQ. EPA agrees that new violations discovered at the facility by that EPA inspection, or an inquiry letter, will be addressed by the EPA. EPA will notify the LDEQ within 30 days of new violations discovered.
4. EPA and LDEQ agree to keep each other apprised of the status of all civil and administrative enforcement cases in the state, including the status of enforcement actions, events, and reasons for actions. This also includes advance notice in instances of joint enforcement lead in accordance with the procedures outlined in the Duplication of Effort section of this MOU.

VI. Multi-media Enforcement

LDEQ will continue to submit a departmental multi-media enforcement strategy to Region 6 on an annual basis.

LDEQ will continue to report any and all multi-media compliance and enforcement activities accomplished during the year through its Mid-Year and End-of-Year Summaries of Multi-Media Inspection/Enforcement Activities submitted to Region 6 by April 1 and October 1 respectively.

LDEQ will continue to target and perform two departmental multi-media inspections per federal fiscal year in accordance with procedures outlined in the annual LDEQ Multi-Media Enforcement Strategy submitted to Region 6. LDEQ reserves the right to continue to perform additional, voluntary multi-media inspections during the fiscal year.

The Investigations and Regulation Development Division (IRDD) of LDEQ's Office of Legal Affairs and Enforcement will remain as the coordinating and directing focus for updating and implementing the annual departmental multi-media enforcement strategy. All correspondence from Region 6 to LDEQ regarding multi-media activities should be directed to the IRDD administrator.

VII. Criminal Enforcement

LDEQ has authority to enforce the Louisiana Environmental Quality Act (EQA) and any other law under which the department has authority or jurisdiction. LDEQ maintains a lead role in the referral of environmental crime cases for prosecution pursuant to the EQA. Befitting this lead role, LDEQ works in conjunction with local, state, and federal law enforcement agencies. LDEQ supports coordination between state and federal prosecutors and investigators. LDEQ fully supports and encourages criminal prosecution for cases where criminal conduct can be demonstrated.

Since the authority to prosecute is vested in the Department of Justice, the Offices of the United States Attorney and District Attorneys, EPA will refer appropriate cases to these agencies for prosecutorial control informing LDEQ when such cases are referred. LDEQ is encouraged to do the same.

In the event LDEQ/EPA initiates a criminal investigation in the state, the following protocol will be followed in order to maintain a strong and effective LDEQ/EPA working relationship.

1. EPA and LDEQ agree to make arrangements for coordinated action, where possible, considering the circumstances. The objective of this coordinated action is for EPA and LDEQ to reach agreement on how to best coordinate available resources and efficiently focus to achieve the greatest possible deterrent effect and remediation.
2. In cases when the EPA Criminal Investigation Division (CID) has the lead investigative role and LDEQ is apprised of this, LDEQ will not pursue enforcement for civil or administrative penalties unrelated to remediation (until completion of the criminal case) or for the violation(s) being pursued by EPA. This does not apply if joint investigative action or parallel civil/criminal enforcement action has been arranged. This is to prevent duplication of effort or confusion. Civil action to compel abatement or compliance may be sought in such cases and will be closely coordinated with the EPA CID counselor assigned to the case. The LDEQ will not communicate with the facility regarding those cases for which EPA has the criminal investigative lead, without coordinating with EPA.

Conversely, the EPA will not communicate with the facility regarding those cases for which LDEQ has the criminal investigative lead, without coordinating with the LDEQ.

3. A parallel process may be appropriate to support both the civil relief necessary to protect human health, the environment, or other significant concern while continuing the criminal investigation and prosecution. EPA and LDEQ will keep each other informed in those instances where the ongoing criminal investigation might inhibit otherwise needed enforcement for newly discovered violations and of program development needs. EPA and LDEQ will coordinate any parallel proceeding with the appropriate prosecutorial authorities and with each other.
4. EPA and LDEQ agree to keep each other apprised of their respective criminal investigations when appropriate and of any concerns for remedial action.
5. EPA and LDEQ will assist each other in investigation of environmental crime by providing access to all permit compliance and enforcement files maintained for any suspect facility. EPA and LDEQ agree to work together.

VIII. Duplication of Effort in Authorized Programs

EPA and LDEQ agree to avoid pursuing enforcement at the same facilities for the same time-frames to the extent possible. Each agency, however, recognizes that in some limited circumstances, orders from both the LDEQ and EPA may be warranted. In order to obtain consistency for facilities screened and accepted for formal enforcement by both EPA and LDEQ, the LDEQ and EPA shall coordinate the development of actions to ensure consistency between the two actions. In order to avoid duplication of effort and resources, and to incorporate a policy of "no surprises", the LDEQ and EPA will review the list of facilities that will be submitted under Section V. Direct Federal Enforcement.

EPA will be responsible for taking corrective action under the Hazardous and Solid Waste Act authorities for investigative (3013) orders at active facilities which have had or should have had interim status under RCRA, or to address potential for imminent and substantial endangerment to human health or the environment (7003).

The LDEQ and EPA agree to coordinate cases so that enforcement actions may be implemented and addressed at as many facilities as possible throughout the state without duplication of effort.

IX. Time frames for RCRA

EPA and LDEQ will strive to meet the program guidance on timely and appropriate enforcement responses. It is recognized that the goal of an enforcement action is to return the facility to compliance as quickly as possible and to deter potential violators. The LDEQ and EPA recognize that, in the following circumstances, the enforcement time frames may be insufficient to prepare and initiate the appropriate enforcement response:

1. bankruptcy/site abandonment;
2. multi-party and/or interrelated cases;
3. changes in facility ownership;
4. additional violations determined during case development;
5. multi-media cases (i.e., Air, CERCLA, Toxic, UIC, etc.);
6. novel legal issues;
7. need for outside technical expertise;
8. concurrent criminal actions;
9. prioritization per comparative risk analysis; and/or
10. when caseload exceeds resources.

The LDEQ will notify EPA in writing within 10 working days of the discovery by LDEQ that the date will be missed, include the reason, as listed above and a synopsis of facts to support the reason (unless such facts would jeopardize litigation of the case). In the event EPA does not find LDEQ's reason for the delay acceptable, EPA will notify LDEQ in writing within 15 working days. EPA may decide to take Federal action; if so, it will notify LDEQ in writing within 45 working days. Where EPA concurs with the alternate schedule, EPA will respond via telephone to LDEQ on a case specific basis within 15 working days and document the facility file.

X. Indian Lands

The LDEQ recognizes that EPA will address any noncompliance of facilities on federally recognized Indian lands. EPA agrees to inform LDEQ of any enforcement action issued in the EPA monthly enforcement status report. EPA will develop and maintain close working relationships with tribal regulatory and law enforcement staff. LDEQ will promote tribal-state cooperation wherever possible, if applicable.

XI. Compliance Assistance Program

LDEQ and EPA intend to develop and implement compliance assistance activities that will result in higher rates of compliance in selected segments of the regulated community. The activities will include compliance assistance inspections, joint work shops, training, and strategies tailored for the LDEQ/EPA compliance assistance program.

XII. State and EPA Reporting

The LDEQ and EPA agree to maintain and to update information regarding their respective inspections and enforcement actions in the following electronic databases:

1. AIRS; (Data entry into these data bases may be batched);
2. PCS; and
3. RCRIS.

The LDEQ will provide EPA with access to LDEQ databases to the extent possible. The LDEQ will provide training to EPA for use of LDEQ databases.

XIII. Disputes Resolution

The LDEQ and EPA agree to attempt to resolve disputes that might arise concerning this enforcement MOU within 30 days of discovery through discussions between first-level management.

If the first-level managers are unable to resolve disputes, senior management will discuss them within 15 days thereafter in an effort to resolve them. If unable to resolve, EPA will proceed with implementing the national policy and LDEQ will proceed with implementing the state policy. This does not affect the grant remedies of either party that are consistent with the respective programs.

XIV. Grant Incorporation

This MOU is an attachment to the Performance Partnership Agreement and appropriate grant work plans/documents.

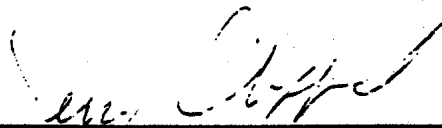
XV. Reopener, Termination and Effective Date

This agreement is meant to provide the framework within which the two agencies intend to operate. This agreement does not waive any legal rights that either party has nor does it provide any rights to facilities or any person not a signatory. This Memoranda of Understanding becomes effective upon the date that it is signed by both Agencies and continues until such time as a new multi-year MOU is signed. The programmatic MOAs remain in effect until such time as new Memoranda of Agreements are signed. Either party may request revisions to the MOU. In the event of revisions, the portion thereof not altered by the revisions shall remain in full effect. Once executed, this MOU will continue in effect unless terminated in writing by the state or EPA upon sixty (60) days prior notice to the respective party.

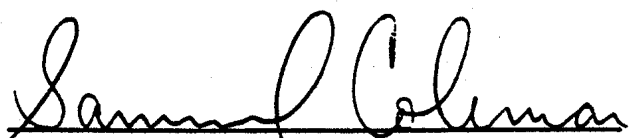

J. Dale Givens
Secretary

Louisiana Department of Environmental Quality

2/18/98
(date)


Jerry Clifford
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 6

2/18/98
(date)


Samuel Coleman, P.E.,
Director
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency
Region 6

2/18/98
(date)

ATTACHMENT A

The LDEQ agrees to take timely, visible, and effective enforcement action considering the following documents as guidance:

All Programs

1. Final FY 98/99 OECA Memorandum of Agreement Guidance, 6/5/97.
2. Final FY 98/99 OECA Memorandum of Agreement Consolidated Technical Guidance (CTG), 6/10/97.

CAA

3. Policy Framework on State/EPA Enforcement Agreements: Draft Addendum on Oversight of State Civil Penalties, 2/28/86.
4. Revised Policy Framework for State/EPA Enforcement Agreements, 8/25/86.
5. Revised Asbestos NESHAP Strategy, 3/31/88.
6. Revised Asbestos NESHAP Implementation Strategy, 2/5/91.
7. Revised Compliance Monitoring Strategy, 3/29/91.
8. Guidance on Timely and Appropriate Enforcement Responses for Significant Air Pollution Violators, 2/7/92.
9. Asbestos NESHAP Addendum to Timely and Appropriate Enforcement Response to Significant Air Pollution Violators, 10/27/93.
10. Clarification Package for the Guidance on the Timely and Appropriate Enforcement Response to Significant Air Pollution Violators (SV/T&A Guidance), 6/14/94.
11. Minimum Substantive Provisions for Permits, Consent Decrees and Compliance Orders.
12. Region 6 Minimally Reportable Action Types.

RCRA

13. Enforcement Response Policy (ERP) revised 3/15/96.
14. Interim Revised EPA Supplemental Environmental Projects Policy, effective 5/8/95.

NPDES

15. The Enforcement Management System, National Pollutant Discharge Elimination System (NPDES), Clean Water Act (CWA), 1989
16. NPDES Inspection Strategy and Guidance for Preparing Annual State/EPA Compliance Inspection Plans, 1985, and Revision to Inspection Coverage and Frequency Criteria of CWA Permittees, 1995
17. National Guidance for Oversight of NPDES Programs, 1987
18. Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework of State/EPA Enforcement Agreements, 1993
19. NPDES Memorandum of Agreement between LDEQ and EPA which became effective on August 27, 1996.